

AMENDED IN ASSEMBLY MARCH 25, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

SENATE BILL

No. 73

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senator
DeSaulnier**
*(Principal coauthors: Senators Alquist, Hernandez, Leno, Liu, and
Steinberg)*

January 10, 2011

~~An act to amend Section 76000.5 of the Government Code, to amend Section 1797.98a of the Health and Safety Code, to amend Sections 12693.43, 12693.60, 12693.615, and 12693.65 of the Insurance Code, to amend Sections 12009, 12201, 12204, 12207, 12242, 12251, 12253, 12254, 12257, 12258, 12260, 12301, 12302, 12303, 12304, 12305, 12307, 12412, 12413, 12421, 12422, 12423, 12427, 12428, 12429, 12431, 12433, 12434, 12491, 12493, 12494, 12601, 12602, 12631, 12632, 12636, 12636.5, 12679, 12681, 12801, 12951, 12977, 12983, 12984, and 13108 of the Revenue and Taxation Code, to amend Sections 42007, 42007.3, 42007.4, and 42008.7 of the Vehicle Code, and to amend Sections 4474.5, 14007.9, 14091.3, 14105.31, 14105.33, 14105.332, 14105.34, 14126.033, 14132, 14154, and 14301.11 of, to amend and repeal Sections 14105.191 and 14134.1 of, to amend, repeal, and add Section 14134 of, to add Sections 14105.07, 14105.192, 14105.451, 14126.036, 14131.05, and 14131.07 to, and to add Article 6 (commencing with Section 14589) to Chapter 8.7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to health care services, making an appropriation therefor, Medi-Cal, and declaring the urgency thereof, to take effect immediately.~~
An act to add Chapter 8.65 (commencing with Section 14518) to Part 3 of Division 9 of the Welfare and Institutions Code,

LEGISLATIVE COUNSEL'S DIGEST

SB 73, as amended, ~~Committee on Budget and Fiscal Review DeSaulnier. Health care services. Adult day health care: community-based services.~~

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law, the Adult Day Health Medi-Cal Law, establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria.

This bill would require the department to submit an application, as prescribed, to the federal Centers for Medicare and Medicaid Services to implement the Keeping Adults Free from Institutions (KAFI) program, which would provide a well-defined scope of services for beneficiaries who meet a high medical acuity standard and are at a significant risk of institutionalization in the absence of community-based services. This bill would provide that it is the intent of the Legislature that the KAFI program allow former recipients of adult day health care services who meet certain high acuity measures to be given immediate priority to transition to the new program.

This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) Existing law authorizes each county to establish a Maddy Emergency Medical Services (EMS) Fund for reimbursement of EMS-related costs, as specified, and provides for the deposit into the EMS Fund of an additional penalty that the county board of supervisors is authorized to have levied in the amount of \$2 for every \$10, or part of \$10, upon fines, penalties, and forfeitures collected for criminal offenses, as specified.~~

~~Existing law establishes a one-time amnesty program for fines and bail meeting certain requirements between January 1, 2012, and June 30, 2012. Existing law includes the above-described additional penalty within this amnesty program.~~

~~This bill would, until July 1, 2016, require the levy of the additional \$2 for every \$10 of a penalty and require the deposit of these moneys into the continuously appropriated State Emergency Services Fund, which would be established by the bill. This bill would continuously appropriate, on an annual basis, 15% of the moneys in the fund, not to~~

exceed \$9 million, to the Emergency Medical Services Authority for allocation to local emergency medical services agencies in counties that had elected, prior to the effective date of this act, to levy the additional penalty for the purpose of maintaining pediatric trauma and emergency services. The bill would make the remainder available, upon appropriation, to the State Department of Health Care Services for the nonfederal share of Medi-Cal program expenditures related to emergency medical services. This bill would also exempt this additional penalty from the one-time amnesty program.

By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law creates the Healthy Families Program, administered by the Managed Risk Medical Insurance Board, to arrange for the provision of health, vision, and dental benefits to children less than 19 years of age who meet certain criteria, including having a limited household income. Existing law requires families with children participating in the program to pay specified family contribution amounts. Existing law continuously appropriates funds, including family contributions, to the board from the Healthy Families Fund for the program.

This bill would, commencing on a specified date, increase those family contribution amounts, subject to federal authorization and any lesser increase in family contribution as is authorized by the federal Department of Health and Human Services. By increasing moneys deposited into a continuously appropriated fund, the bill would make an appropriation.

Existing law requires the board to establish the required copayment levels for specific benefits and prohibits copayments from exceeding the copayment level established for state employees under the Public Employees' Retirement System (PERS) as of January 1, 1998, and from exceeding \$250 annually per family. Existing law also requires covered health benefits provided under the program to be equivalent to those provided to state employees under PERS as of January 1, 1998.

This bill would require the board to set copayments for outpatient emergency room and inpatient hospital services at specified amounts, contingent upon federal approval and implementation of the same copayments under Medi-Cal, as specified. The bill would also modify the health benefit and copayment provisions to prohibit copayments from exceeding those charged, and require covered health benefits to be equivalent to those provided, to state employees under PERS in the

year prior to the program plan year, except as otherwise provided. The bill would deem regulations of the board to implement these provisions to be emergency regulations.

~~(3) Existing law provides, except as specified, that vision benefits under the Healthy Families Program shall be equivalent to, and subscriber copayment levels shall reflect, those provided to state employees through the Department of Personnel Administration on July 1, 1997.~~

~~This bill would delete the specified date of July 1, 1997, from these provisions.~~

~~(4) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Under existing law, one of the methods by which Medi-Cal services are provided is pursuant to contracts with various types of managed care plans. Existing law imposes various taxes, including a tax at a specified rate on the gross premiums of an insurer, as defined, and, until July 1, 2011, on the total operating revenue, as specified, of a Medi-Cal managed care plan, as defined. Existing law continuously appropriates the revenues derived from the tax on Medi-Cal managed care plans for specified purposes.~~

~~This bill would extend the imposition of the tax on the total operating revenue of Medi-Cal managed care plans until January 1, 2014, and make other conforming changes. By extending the imposition of a tax whose revenues are continuously appropriated, this bill would make an appropriation.~~

~~(5) Existing law requires the establishment of protocols to ensure appropriate services are provided for persons transitioning as a result of the planned closure of the Agnews Developmental Center and the Lanterman Developmental Center. For persons transitioning under a plan for the closure of these developmental centers who have service needs for coordinated medical and specialty care identified in their individual program plans that cannot be met using the traditional Medi-Cal fee-for-service system, existing law establishes a structure requiring provision of those services under Medi-Cal managed care health plans that are currently operational in prescribed counties as a county organized health system or a local initiative, if consumers choose to enroll, and authorizes prescribed supplemental payments, including payments for administrative services.~~

~~This bill would recast those provisions to require, for consumers transitioning from the Lanterman Developmental Center, that the Medi-Cal managed care health plan be any plan operating in the various counties if the consumers choose to enroll, or as mandated by prescribed statutory provisions; to delete consultation with the Lanterman Developmental Center staff as an administrative service eligible for supplemental reimbursement; and to require that plans be paid a full-risk capitation payment.~~

~~(6) Existing law requires the collection of a fee from a person who is ordered or permitted to attend a traffic violator school and requires revenues derived from the fee to be collected and deposited in the general fund of a county for distribution with \$2 for every \$10 that would have been collected as an additional penalty deposited in the EMS Fund.~~

~~This bill would require, on and after July 1, 2011, in every county, \$2 for every \$10 that would have been collected as an additional penalty to be deposited in the State Emergency Services Fund.~~

~~By increasing the duties of local officials, this bill would impose a state-mandated local program.~~

~~(7) Existing law, operative 30 days after the date that the increase in the state's federal medical assistance percentage (FMAP) pursuant to the federal American Recovery and Reinvestment Act of 2009 (ARRA) is no longer available, requires, no later than 90 days after this operative date, each individual to pay a monthly premium that is equal to 5% of his or her individual or spousal countable income, as described, except that the premium cannot fall below or exceed a specified minimum and maximum premium payment, as provided.~~

~~This bill would, instead, make these provisions operative 30 days after the execution of a declaration by the Director of Health Care Services that states that implementation of these provisions will not jeopardize the state's ability to receive certain federal funds, as specified.~~

~~(8) Existing law, until January 1, 2012, requires the State Department of Health Care Services, subject to any necessary federal approval, to take all appropriate steps to amend the Medicaid state plan, to implement a requirement that any hospital that does not have in effect a contract with a Medi-Cal managed health care plan that establishes payment amounts for services furnished to a beneficiary enrolled in that plan shall accept, as payment in full, prescribed payment amounts.~~

~~This bill would extend the duration of these provisions until January 1, 2013.~~

~~(9) Existing law, until July 31, 2012, requires that money appropriated for the purposes of the Medi-Cal Long-Term Care Reimbursement Act shall be, in part, used for increasing rates, except as otherwise provided, for freestanding nursing facilities, as specified. Existing law requires that the maximum annual increase in the weighted average Medi-Cal reimbursement rate for the purposes of these provisions shall not exceed a specified amount plus the projected cost of complying with new state and federal mandates. Existing law requires the weighted average Medi-Cal reimbursement rate increase for the 2010-11 and 2011-12 rate years to be adjusted by the department for specified reasons.~~

~~This bill would require, except as provided, that for dates of service on and after June 1, 2011, the payments resulting from the application of these rate increases shall be reduced by 10% and would authorize the Director of Health Care Services to adjust the percentage reductions as specified. This bill would require, except as provided, that payments to intermediate care facilities for the developmentally disabled, as specified, for dates of service on and after June 1, 2011, shall not exceed the reimbursement rates that were applicable to those providers in the 2008-09 rate year, reduced by 10%. This bill would also authorize the Director of Health Care Services to adjust the percentage reductions as specified.~~

~~(10) Existing law requires, except as otherwise provided, Medi-Cal provider payments to be reduced by 1% or 5%, as specified, for dates of service on and after March 1, 2009. Existing law also requires provider payments for specified non-Medi-Cal programs to be reduced by 1% for dates of on and after March 1, 2009.~~

~~This bill would provide that these provisions shall become inoperative for dates of service on and after June 1, 2011. This bill would require, except as otherwise provided, that Medi-Cal and specified non-Medi-Cal provider payments be reduced by 10%, as prescribed, for dates of service on and after June 1, 2011.~~

~~(11) Existing law requires the reimbursement to Medi-Cal pharmacy providers for legend and nonlegend drugs, as defined, to consist of the estimated acquisition cost of the drug, as defined, plus a professional fee for dispensing. Existing law authorizes the State Department of Health Care Services to enter into contracts with manufacturers of single-source and multiple-source drugs, on a bid or nonbid basis, for drugs from each major therapeutic category. Existing law requires, among other things, that contracts executed pursuant to these provisions~~

provide for an equalization payment amount, as defined, to be remitted to the department by the manufacturer on a quarterly basis.

This bill would, instead, provide that the contracts shall provide for a state rebate, as defined, and would make conforming changes. This bill would also provide that it is the intent of the Legislature to enact legislation by August 1, 2011, that provides for the development of a new reimbursement methodology for pharmacy providers. This bill would, in relation to establishing the new reimbursement methodology, authorize the State Department of Health Care Services to require providers, manufacturers, and wholesalers to submit any data the Director of Health Care Services determines is necessary or useful in preparing for the transition from a methodology based on average wholesale price to a methodology based on actual acquisition price.

(12) Existing law requires Medi-Cal beneficiaries to make set copayments for specified services. Copayments for services, under existing law, do not reduce the reimbursement to the providers. Existing law, with certain exceptions, prohibits a provider from denying services to an individual solely because the person is unable to pay the copayment.

This bill would, commencing as provided, revise the copayment rates, expand the services for which copayments are due, and require the department to reduce the amount of the payment to the provider by the amount of the copayment. The bill would provide that, with certain exceptions, a provider has no obligation to provide services to a beneficiary who does not pay the copayment at the point of service.

(13) Existing law, provides that outpatient services provided by a physician are a covered benefit under the Medi-Cal program, subject to utilization controls.

This bill would, to the extent permitted by federal law, limit physician office and clinic visits that are a covered benefit under the Medi-Cal program, with specified exceptions, to 7 visits per beneficiary per fiscal year. This bill would require these provisions to be implemented on the first day of the first calendar month following 180 days after the effective date of the bill or on the first day of the calendar month following 60 days after federal approval, whichever is later.

(14) Existing law provides for a schedule of benefits under the Medi-Cal program, which includes prescribed drugs subject to the Medi-Cal List of Contract Drugs, enteral formulae subject to the Medi-Cal list of enteral formulae, and hearing aids, all of which are subject to utilization controls. Existing law provides that nonlegend

~~acetaminophen-containing products, with the exception of children's Tylenol, selected by the department are not covered benefits.~~

~~This bill would, in relation to these benefits, instead provide that nonlegend acetaminophen-containing products, with the exception of children's acetaminophen-containing products, and nonlegend cough and cold products, selected by the department are not covered benefits. This bill would, in relation to enteral formulae, instead refer to the benefit as enteral nutrition products. This bill would, except as specified, require that the purchase of enteral nutrition products be limited to those products administered through a feeding tube. This bill would also, with certain exceptions, establish an annual per beneficiary benefit cap amount, as defined, for optional hearing aid benefits.~~

~~(15) Existing law provides that it is the intent of the Legislature to provide appropriate funding to the counties for the effective administration of the Medi-Cal program, except for specified fiscal years in regard to any cost-of-doing-business adjustment.~~

~~This bill would additionally provide that it is the intent of the Legislature to not appropriate funds for the cost-of-doing-business adjustment for the 2011–12 fiscal year.~~

~~(16) Existing law, the Adult Day Health Medi-Cal Law, establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria.~~

~~This bill would provide, to the extent permitted by federal law, that notwithstanding existing law, adult day health care be excluded from coverage under the Medi-Cal program. This bill would provide that this provision shall be implemented on the first day of the first calendar month following 90 days after the effective date of the bill or on the first day of the first calendar month after federal approval, whichever is later.~~

~~(17) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.~~

~~This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.~~

~~(18) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~(19) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$. Appropriation: ~~yes-no~~. Fiscal committee: yes.
State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 *SECTION 1. Chapter 8.65 (commencing with Section 14518)*
2 *is added to Part 3 of Division 9 of the Welfare and Institutions*
3 *Code, to read:*

4
5 *CHAPTER 8.65. KEEPING ADULTS FREE FROM INSTITUTIONS*

6
7 14518. (a) *The department shall submit an application to the*
8 *federal Centers for Medicare and Medicaid Services (CMS) to*
9 *implement the Keeping Adults Free from Institutions (KAFI)*
10 *program, which shall provide a well-defined scope of services for*
11 *beneficiaries who meet a high medical acuity standard and are at*
12 *a significant risk of institutionalization in the absence of*
13 *community-based services. The KAFI program shall achieve all*
14 *of the following:*

15 (1) *Promote home- and community-based care.*

16 (2) *Work in coordination with existing state programs to delay*
17 *or prevent inappropriate or personally undesirable*
18 *institutionalization.*

19 (3) *Emphasize partnership between the participant, the family,*
20 *the physician, and the community in working towards maintaining*
21 *personal independence.*

22 (b) *The department may implement this chapter by means of a*
23 *state plan amendment or federal waiver, or a combination thereof,*
24 *as necessary to accomplish the intent of this chapter. The*
25 *department shall seek to maximize the availability of federal*
26 *financial participation for implementation of this chapter under*

1 *the terms of any existing waivers or state plan provisions, through*
2 *amendment of any existing waivers or state plan provisions, or by*
3 *means of a new waiver or state plan amendment, or any*
4 *combination thereof.*

5 *(c) In developing the application to CMS pursuant to this*
6 *section, the department shall consult with interested stakeholders*
7 *and the Legislature.*

8 *(d) It is the intent of the Legislature that the KAFI program*
9 *allow former recipients of adult day health care services who meet*
10 *certain high acuity measures to be given immediate priority to*
11 *transition to the new program.*

12 *(e) Notwithstanding the Administrative Procedure Act (Chapter*
13 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
14 *Title 2 of the Government Code), the department may implement*
15 *the provisions of this chapter through all-county letters or similar*
16 *instructions, without taking regulatory action. Prior to issuing any*
17 *letter or similar instruction authorized pursuant to this subdivision,*
18 *the department shall notify and consult with stakeholders, including*
19 *advocates, providers, and beneficiaries, in implementing,*
20 *interpreting, or making specific this chapter.*

21 *SEC. 2. This act is an urgency statute necessary for the*
22 *immediate preservation of the public peace, health, or safety within*
23 *the meaning of Article IV of the Constitution and shall go into*
24 *immediate effect. The facts constituting the necessity are:*

25 *In order to ensure that health care for Californians is improved*
26 *at the earliest possible time, it is necessary for this act to take*
27 *effect immediately.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, March 14, 2011. (JR11)**